

EXHIBIT A

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

United States of America v. Microsoft Corporation
and
State of New York, ex rel, Attorney General
Dennis C. Vacco, et al v. Microsoft Corporation

SUBPOENA IN A CIVIL CASE

CASE NUMBER:
Actions Pending in the United States District
Court for the District of Columbia
1:98CV01232
1:98CV01233

TO: Microsoft Corporation
c/o John Warden, Esq./Michael Lacovara, Esq.
Sullivan & Cromwell
125 Broad Street
New York, NY 10004

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Department of Justice, Antitrust Division 450 Golden Gate Avenue - Suite 10-0101 San Francisco, CA 94102	DATE AND TIME April 12, 1999 at 10:00am
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☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

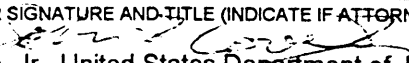
See attached Schedule of Documents.

PLACE	DATE AND TIME
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedures, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  John F. Cove, Jr., United States Department of Justice, Antitrust Division Attorney for Plaintiff United States and on behalf of Plaintiff States	DATE AND TIME April 1, 1999 3:00pm
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ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

John F. Cove, Jr., United States Department of Justice, Antitrust Division
450 Golden Gate Avenue, #10-0101, San Francisco, CA 94102 (415) 436-6660

PROOF OF SERVICE

SERVED	DATE	PLACE
	April 1, 1999	Microsoft Corporation c/o John Warden, Esq./Michael Lacovara, Esq. Sullivan & Cromwell, 125 Broad Street, New York, NY 10004
SERVED ON (PRINT NAME) John Warden, Esq.		MANNER OF SERVICE Via Facsimile at (212) 558-3588
SERVED BY (PRINT NAME) Joli M. Wilson		TITLE Paralegal

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on April 1999
DATE

Joli M. Wilson
SIGNATURE OF SERVER

ADDRESS OF SERVER

United States Department of Justice, Antitrust Division
450 Golden Gate Avenue
San Francisco, CA 94102

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

© PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will reasonably be compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DEFINITIONS

1. "And" and "or" are intended to have both conjunctive and disjunctive meanings.
2. "AOL" means America Online, Inc, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.
3. "Document" has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure, and includes but is not limited to all of the matters defined in Rule 1001 of the Federal Rules of Evidence. It also includes each computer file and written, recorded, and graphic material of every kind in the possession, custody or control of Microsoft, electronic correspondence and drafts of documents, electronic mail messages, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of Microsoft. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
4. "The Litigation" refers to the actions captioned *United States v. Microsoft Corp.*, CA No. 98-1232 (TPJ) and *State of New York ex rel. Attorney General Dennis Vacco, et al. v. Microsoft Corp.*, CA No. 98-1233 (TPJ), pending in the United States District Court for the District of Columbia.

5. "Microsoft" means Microsoft Corporation, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

6. "Netscape" means Netscape Communications Corporation, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

7. "Sun" means Sun Microsystems, Inc., each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them

8. "Microsoft Software" means any software developed, licensed, and distributed, or considered for development, licensing, and distribution by Microsoft.

9. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal, or governmental entity.

10. "Relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth,

considering, recommending, concerning, or pertaining to, in whole or in part.

11. “Third Party” means any person other than the United States, any State, Microsoft, or any officer, director, employee, agent, consultant, or other person acting for or on behalf thereof.

12. “Transactions” means the acquisition of Netscape by AOL, and the “Strategic Alliance” and similar agreements executed by AOL, Netscape, and/or Sun.

INSTRUCTIONS

1. If documents responsive to this Subpoena previously have been submitted to the Antitrust Division or any of the plaintiff States and have not been returned by the Division or those States (or destroyed at your direction or pursuant to judicial order), you need not reproduce such documents. Please identify all documents previously produced, including the date of submission and the document control number or other identification of where in that submission the documents can be found.

2. All drafts and non-identical copies of responsive documents should be produced.

3. For each document or portion thereof withheld under a claim of privilege, submit a sworn or certified statement from Microsoft’s counsel or one of Microsoft’s officers identifying the withheld document by author, addressee, date, number of pages, subject matter, and document control number; specifying the nature and basis of the claimed privilege and the paragraph of this Subpoena to which the withheld material is responsive; and identifying each person to whom the withheld material was sent and each person to whom the withheld material or its contents, or any part thereof, was disclosed. Denote all attorneys identified with an asterisk.

4. This Subpoena shall be deemed continuing as provided in the Federal Rules of Civil Procedure, so as to require further and supplemental production if additional documents called for by this Subpoena are obtained or created by Microsoft between the time of the Subpoena and the time Microsoft completes its testimony at trial.

SCHEDULE OF DOCUMENTS

1. All documents relating to any business analyses and assessments of, and predictions concerning, the Transactions, including but not limited to:
 - a. the potential effect, or lack of effect, the Transactions will have on (i) Microsoft or Microsoft's business, (ii) operating systems, (iii) middleware (including web browsing software), or (iv) any other software development platforms;
 - b. the potential effect, or lack of effect, the Transactions will have on the market share, usage, or pricing of any Microsoft software product;
 - c. the potential effect, or lack of effect, the Transactions will have on (i) the creation, distribution, or use of web browsing software, (ii) the number of subscribers to online services, or (iii) the amount of traffic to Internet portal sites;
 - d. the potential effect, or lack of effect, the Transactions will have on any contract, business arrangement, or other dealings between Microsoft and AOL, including on AOL continuing to use Microsoft's Internet Explorer in client software for AOL's AOL-branded and CompuServe online services; on any discussion, consideration, or decision to renew, extend, alter, change, or cancel Microsoft's agreement(s) with AOL; or on Microsoft continuing to distribute AOL access or client software

with Windows;

- e. the potential effect, or lack of effect, the Transactions will have on AOL using, or considering the use of, Netscape or Sun web browsing software in any future AOL client software, or on AOL's distribution of such software;
- f. the potential effect, or lack of effect, the Transactions will have on the Litigation or any aspect of the Litigation;
- g. all communications and correspondence within Microsoft or between Microsoft and any third-party relating to any business analyses and assessments of, and predictions concerning, the Transactions; and
- h. all actual or potential Microsoft responses, reactions, plans, strategies, or other actions relating to the Transactions.